

THE BORDER AFTER 9/11 — SECURITY TRUMPS ALL

Kathryn Bryk Friedman

At the end of the 1990s, Canada and the United States signed an agreement to streamline and harmonize border management, expand cooperation in customs and immigration, and collaborate on common threats from outside North America. But after the events of September 11, 2001, the preoccupation with security became the prism through which all policy dictates and outcomes were measured. It remains the case to this day, and the attempted Christmas Day bombing aboard an airliner approaching Detroit has only heightened those concerns. But as Kathryn Friedman writes, there is a governance framework for making the Canada-US border a priority in Washington, and facilitating the world's largest trading relationship could help spark a recovery from the recession.

À la fin des années 1990, le Canada et les États-Unis signaient un accord visant à rationaliser et à harmoniser leur gestion frontalière, à renforcer leur coopération en matière de douane et d'immigration ainsi qu'à combattre conjointement les menaces de l'extérieur de l'Amérique du Nord communes aux deux pays. Mais après les attentats du 11 septembre, l'enjeu de la sécurité est devenu le prisme au travers duquel on a dicté toutes les politiques et mesuré leurs résultats. C'est toujours le cas aujourd'hui, et l'attentat raté du jour de Noël à bord d'un avion en route vers Détroit n'a fait qu'aviver ces craintes. Mais comme l'observe Kathryn Friedman, il existe un cadre de gouvernance qui permettrait de faire de la frontière canado-américaine une priorité à Washington — la récession, conclut-elle, nous offre l'occasion de relier la reprise économique aux États-Unis avec la question frontalière.

What a difference a decade makes. In October 1999, Prime Minister Jean Chrétien and President Bill Clinton promulgated the Canada-US Partnership, which set forth three guiding principles for Canada-US border cooperation: (1) streamline and harmonize border policies and management; (2) expand cooperation to increase efficiencies in customs, immigration, law enforcement and environmental protection at and beyond the border; and (3) collaborate on common threats from outside Canada and the United States. The agreement was intended to promote an integrated, binational approach to border management. Optimism ran high, with leadership in both countries pledging to create a border that would serve as a model for the world.

Fast forward to the end of 2009, the end of the first decade of the 21st century. The potential of a truly binational approach to border management has come to a screeching halt. A sense of resignation exists among certain policy-makers and stakeholders on both sides of the border, many of whom scratch (or bang) their heads when thinking about current border policy. Hardly any border principles are to be found, formal, meaningful collaborations on bor-

der policy are few and far between, and efforts to increase efficiencies at the border have met with lacklustre success.

The events of September 11, 2001, constituted more, much more, than a day of infamy. They became the new prism through which all policy outcomes were determined, at the Canada-US border and everywhere else. From the fall of the Twin Towers to the present day, security trumps everything, including trade. The attempted Christmas Day bombing aboard Northwest 253 on its approach to Detroit, likely over the skies of southern Ontario, only reminds us, as it has certainly reminded President Obama, that security is still paramount in the minds of Americans.

What exactly does the border look like today? In an era in which "security trumps trade," border characterization encompasses two dimensions. On the one hand, the post-9/11 border reflects problems in the trenches, including increased costs and delays for passenger and commercial flows due to intensified inspection procedures; prohibitive regulations like the rules of the Animal and Plant Health Inspection Service (APHIS) and the Importer Security Filing and Additional Carrier Requirements (known as 10+2); misal-

location of resources; and lack of investment in aging infrastructure. Border policy recommendations are couched in terms of “risk management” and, for the most part, directed toward discrete challenges of the day such as implementing new processes and technologies and harmonizing credentials to reduce out-of-pocket costs for the trucking industry. On the other hand, when longer-term thinking is considered, researchers recommend a smorgasbord of institutional structures, ranging from creating a joint border commission to establishing mechanisms that engage regional and state-provincial actors. Stakeholders are scrambling to come up with something — anything — to make the border work better.

Current thinking on border policy, although useful, is limited. First, it represents a “finger in the dike” approach — recommendations and actions address current challenges and short-term solutions are insufficient for crafting a long-term, comprehensive approach to border policy. Second, each of the longer-term institutional recommendations is plausible; however, whether one is pursued over another will depend upon how Canada and the United States resolve fundamental border governance questions in the post-September-11 world — how these countries organize and act to establish a vision on border policy, allocate resources and achieve goals. Also, negotiating the interplay between security and economic interests is intrinsic to governance of the Canada-US border. Although border policy historically has contended with these two interests, 21st-century forces of globalization — both the beneficial and the dark — exacerbate this tension and put a point on inherent trade-offs between the desire to maximize prosperity and the wish to minimize risks posed by terrorism and other transnational threats.

The time seems right, then, to ask and preliminarily answer some questions about border governance:

- How do Canada and the United States currently organize and act to establish a vision on border policy?
- How do these countries allocate resources when it comes to the border?
- How are goals achieved?
- How are trade-offs between security and economy negotiated?

Prior to September 11, Canada and the United States collaborated on border issues broadly defined, organizing and acting on a functional basis pursuant to international agreements and treaties such as the 1909 Boundary Waters Treaty, the 1940 Ogdensburg Announcement, the 1958 North American Air Defense Command (NORAD) Agreement, and the 1995 Canada-United States Accord on Our Shared Border. In the post-September-11 environment, with the exception of the Smart Border Accord of 2002 (which successfully fulfilled its agenda), one is hard pressed to find evidence of joint organization and action when it comes to border policy. Although each country individually articulated a security vision — Canada’s *Securing an Open Society: Canada’s National Security Policy* and the US’s *National Security Strategy of the United States of America* — the absence of a joint vision is glaringly evident.

Furthermore, a hodgepodge of institutions and processes focused on border

of Homeland Security highlights the security emphasis of current border governance. Prior to September 11 various pieces of legislation that recommended significant executive and legislative institutional changes to meet future security demands legislation were introduced, but never passed.

September 11, however, served as the clarion call for action. Eleven days after the terrorist attacks, President George W. Bush announced that he would create the Office of Homeland Security in the White House and appoint Pennsylvania Governor Tom Ridge as the director. The office would oversee and coordinate a comprehensive national strategy to safeguard the country against terrorism and respond to any future attacks. In an address to the nation in June 2002, President Bush outlined the contours of the permanent cabinet-level Department of Homeland Security to protect the United States. He set forth four essential missions that corresponded to the four proposed divisions in the department, one of which was border security. The mission of this division was to control the borders and prevent terrorists and explosives from entering the country.

Myriad executive orders were subsequently promulgated and legislation proposed, all of which resulted in President Bush signing the *Homeland*

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policy exists in both countries. On the US side of the border, there can be little doubt that the primary actor charged with border policy vision has been — and in the foreseeable future will continue to be — the United States Department of Homeland Security (DHS).

An examination of the history, mission and goals of the Department

Security Act of 2002 into law on November 25, 2002. The Department of Homeland Security became operational on January 24, 2003, two months after the *Homeland Security Act* was passed. Organizational changes ensued over the next two years, with border and transportation security all the while remaining at the top of the



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Long lineups have become a familiar sight at the Canada-US border since the events of September 11, 2001. From an American perspective, security now trumps trade — and everything else.

list. Hence, since its inception, although lip service is paid to allowing the flow of legitimate goods and people over the border, DHS was established to chant the mantra of security, security, security.

To further emphasize this point, a September 2008 strategic plan sets forth the vision, core values and goals of DHS. The vision of DHS is “[a] secure America, a confident public, and a strong and resilient society and economy.” Reinforcing this vision, the mission of DHS is to “lead the unified national effort to secure America... prevent and deter terrorist attacks... protect against and respond to threats and hazards to the Nation [and] secure

our national borders while welcoming lawful immigrants, visitors, and trade.” Goals of DHS include protecting the nation from dangerous people and goods, protecting critical infrastructure, strengthening emergency preparedness and critical response mechanisms and strengthening and unifying DHS operations. Thus, notwithstanding optimism over the recent announcement of twice-yearly dialogue between Secretary Janet Napolitano and Public Safety Minister Peter Van Loan on border issues, expectations should take into account that DHS is doing what it was established to do.

Other departments and agencies maintaining border policy as part of

their portfolios include the Department of Commerce, the Department of Transportation (DOT), the Department of Agriculture, the Consumer Product Safety Commission and the Department of State. Some of these agencies theoretically have economic interests and the facilitation of trade at their core; however, they cannot counter the gravitas of DHS. For example, Commerce and Transportation are concerned with the facilitation of the free flow of goods and people to and from Canada — arguably the most important trading partner of the United States — but do not have a comprehensive northern border vision. In fact, current DOT funding considerations include cutting cross-border programs

along the northern border that contribute to economic vitality.

Furthermore, given President Obama's declaration that "border policy is foreign policy," Secretary of State Clinton has addressed the Canada-US relationship. Rather than emphasize the need for remaining competitive in a globalized marketplace, State Department officials have stated that the US must "harden" the border with Canada. Other agencies also discourage free flows of people and goods across the border. The Department of Agriculture and the Consumer Product Safety Commission have recently promulgated regulations (APHIS and rules on lead paint) that increase the costs of doing business.

Further representative of a fragmented approach to border policy and mirroring events on the US side of the border, Public Safety Canada was established in 2003 to ensure coordination across all federal departments and agencies responsible for national security and the safety of Canadians. The ministry's mandate is to keep Canadians safe from a range of risks such as natural disasters, crime and terrorism. To do this, Public Safety Canada coordinates and supports the efforts of federal organizations ensuring national security and the safety of Canadians. According to the ministry's Web site, "There is no more fundamental role for government than the protection of its citizens." The goals of this ministry include emergency management, crime prevention, corrections policy, national security and law enforcement — the latter two of which have a border security component. Collaboration between Public Safety Canada and DHS occurs; however, the emphasis is on security.

Several other Canadian ministries and departments play a role in border policy. Transport Canada, for example, works with national and international partners, including Public Safety Canada and DHS, to prevent and manage security risks in all modes of transportation.

The Department of Foreign Affairs and International Trade and Industry Canada have an inherent interest in the border, with enhancing market access and a strengthened relationship with the US high among priorities. Nonetheless, like their US counterparts, these agencies collectively have been unable to counter the security emphasis.

Deeper analysis is required to further flesh out facts and themes presented in this article. Nonetheless, this preliminary sketch of border governance provides some insight into how Canada and the United States organize and act on border policy. A governance lens highlights quite effectively why the border is not working very well.

It follows that policy-makers in Washington must be convinced that it is in the interest of the United States to collaboratively govern the border in a way that accommodates economic interests of Canada and the United States. A two-prong strategy is suggested. First, to capture this interest and lay the groundwork for a collaborative governance framework, stakeholders must become better at telling the story of the border.

Governance of the border, like management of any common resource, is an inherently collaborative enterprise, yet myriad institutions and processes exist separately in each country, with each pursuing its own vision and goals. Although some of these agencies have facilitation of people and goods as part of their portfolios, thus allowing for the prospect of economic interests entering the calculation, the Department of Homeland Security and its security mandate continue to drive border policy, with Public Safety Canada assisting in this effort through its structure and processes. Collaborations do indeed exist, but this governance sketch demonstrates that the fact that border

policy is lopsided with emphasis on security should come as no surprise — these agencies are implementing visions, achieving goals and allocating resources in pursuit of a safe and secure border. In other words, they are doing exactly what they were set up to do. Agencies that theoretically have an interest in the free flow of people, goods and services across the border either don't have a specific mandate about the northern border or cannot counter the sheer influence of DHS. One is hard-pressed to conclude that any negotiation between trade-offs that are inherent to border policy — security and economy — has occurred during the past eight years.

How can better border governance be achieved? If policy-makers should not look back and resurrect agreements like the Canada-US Partnership, how can Canada and the United States move forward? Tai Gong Wong, an ancient Chinese philosopher, stated, "When benefits are mutual, then cooperation will follow." It follows that policy-makers in Washington must be convinced that it is in the interest of the United States to collaboratively govern the border in a way that accommodates economic interests of Canada and the United States. A two-prong strategy is suggested. First, to capture this interest and lay the groundwork for a collaborative governance framework, stakeholders must become better at telling the story of the border. Although much research has examined the economic impact of border "thickening" on the binational regions along the 49th parallel, the story needs to be more compelling in order for Washington to take notice. Stakeholders must demonstrate that the Canada-US economic relationship — and the border that can strengthen or weaken this relationship — is the lifeline for continued prosperity. Small to medium-sized companies and large companies located throughout the

country are impacted by current border policy. Approximately 35 states list Canada as their top export market. These relationships, and the decline in border traffic over the past years, translate into economic impact and jobs. This story must be told in a way that goes beyond \$1 billion in daily trade to concretely illustrate why policy-makers need to come up with better border governance. Stakeholders must make it real to policy-makers, objectively demonstrating economic impact over time. Armed with the story, stakeholders can make the case to the right actors in the Obama administration.

Second, once the importance of the border is coherently demonstrated, efforts can be launched to establish better governance mechanisms within Canada and the United States and between them. With regard to internal governance mechanisms, although the Department of Homeland Security will be in the mix, it is not clear whether stakeholders interested in economic aspects of border governance should continue

knocking exclusively on its door — or expect much change from it — as this agency, as demonstrated above, is doing what it was set up to do. Other departments and agencies, including the Departments of State, Transportation and Commerce, can be brought into the mix in a way that goes beyond current efforts at coordination. Then, conversations between Canada and the United States about a collaborative border governance framework — perhaps one modelled upon NORAD — can begin to take root. Although this effort will take time to bear fruit, the contours of a collaborative framework can begin to take shape within and among the bureaucracies in each country. The power of these binational networks should not be underestimated, as they can pave the way to new border governance arrangements.

In the end, there is good news and bad news when thinking about the border as a governance problem. The bad news is that forging a well-governed border will continue to be an uphill struggle. Unlike September

11, which served as a shock to the American people, economic decline related to the border is more akin to a slow burn, that is, although not as obvious as a shock to the system, it can be just as devastating. The good news is that the global recession provides an opportunity to link recovery of the United States and President Obama's legacy to border policy. This legacy could include laying the foundation for a well-governed border between Canada and the United States, thus ensuring the security and competitiveness of North America in the globalized world of the 21st century.

Kathryn Bryk Friedman serves as deputy director of the University at Buffalo Regional Institute. Her research focuses on governance, border policy and international law issues related to the Canada-US relationship. The author would like to thank Kathryn Foster, director of the Regional Institute, whose work on regional governance and resilience served as the basis for some of the ideas presented in this piece.



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